IN THE

SUPREME COURT

OF THE

United States

October Term 1955

JOHN LLOYD TAYLOR,
Defendant-Appellant,
vs.
UNITED STATES OF AMERICA,
Plaintiff-Appellee.

No. 193

PETITION FOR REHEARING

To The Honorable Chief Justice, Earl Warren, and to the Honorable Associate Justices of the Supreme Court of the United States:

COMES NOW JOHN LLOYD TAYLOR and respectfully petitions this Honorable Court for rehearing on the following grounds, to-wit:

An important new point has been discovered in the re-analysis of the case which ought to be considered and passed on by this Honorable Court; namely,

WHETHER A SUBPOENA TO APPEAR BEFORE A FEDERAL GRAND JURY COMES UNDER THE RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES WHERE THE PERSON SUBPOENAED IS MERELY A WITNESS AND IS NOT CHARGED WITH ANY CRIME AND THE SUBPOENA IS SERVED AT A DISTANCE OF MORE THAN 100 MILES FROM THE RESIDENCE OF THE PERSON SUBPOENAED.

HAS A DISTRICT COURT THE JURISDICTION AND POWER TO COMPEL A WITNESS TO TRAVEL 2600 MILES WITH BOOKS AND RECORDS AND PUNISH HIM FOR CONTEMPT FOR FAILURE TO DO SO?

THE FACTS

The factual basis for rehearing is this: On August 6th, 1953, the Clerk of the District Court at Detroit, Michigan, in the Eastern District of Michigan, issued a subpoena to John Lloyd Taylor, at 6605 Hollywood Boulevard, Los Angeles, California, a distance of 2600 miles and *outside* the judicial district of the Eastern District of Michigan, and more than 100 miles away from that district, to produce all books and records covering the operation of the Detroit, Michigan office of the Professional Screen Guild, and all the names and addresses of all the officers and employees with salaries paid, and all records of the Professional Screen Guild, showing membership in that organization by Bing Crosby, Bob Hope, Roddy McDowell, Elizabeth

Taylor, Dean Stockwell and Margaret O'Brien. The document did not purport to state that those records were in the *judicial district* of the *Eastern* District of Michigan nor that the witness was in that district or resided in that district. The document was *served* on Mr. Taylor in Los Angeles, California on August 11th, 1953, where he has his residence and principal place of business minus an actual immediate tender of travel expense. The subpoena called for his appearance on August 13th—two days later—at Detroit, Michigan, but by a series of phone calls it was purportedly extended to August 18th, 1953. The subpoena called for Mr. Taylor (2600 miles away) to appear before the Federal Grand Jury at Detroit, Michigan, in the Eastern District of Michigan. For his failure to appear in the designated day in person extended by telephone he was adjudged in contempt and given five months in jail, and required to post a bail bond of $10,000 on appeal.

The questions involved in this case,, in addition to those urged on the original petition is whether the District Court of the Eastern District of Detroit had jurisdiction to issue a subpoena for a *witness* 2600 miles away, and not in that judicial district and whether it had jurisdiction to adjudicate him in contempt for failure to appear at the designated time, 2600 miles away from his home and whether such a subpoena to appear merely as a *witness* and to produce books and records to a point (2600 miles away) is pursuant to any statutory authority or rule of court, and is not contrary to the constitution, giving jurisdiction to district courts only within their own judicial districts.

The petitioner urges, upon this Court, that a *witness* to appear before a Grand Jury and to produce books and records before that body is a *civil* subpoena governed by the Rules of Civil Procedure for the District Courts of the United States.[1] Certainly the *witness* is himself not charged with any crime, nor does any statute or other rule fix the authority for the issuance of a subpoena and the compulsion to appear at a distance 2600 miles away. The mere issuance of a subpoena to appear before that body is no indication that a crime will even be charged. In this case no one has ever been charged with a crime.

The statute or rule governing witnesses in civil proceedings is Rule 45, Rules of Civil Procedure for the District Courts of the United States which provides as follows:

(a to e . . .)

(e) Subpoena for a Hearing or Trial.

(1) At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of the district court for the district in which the hearing or trial is held. A subpoena requiring the attendance of a *witness* at a hearing or trial may be served at any place *within the district,* or at any place *without* the district that is within 100 miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the United States provides therefor, the court upon

[1]A grand jury proceeding is not a criminal prosecution and a witness therein is not a party defendant. *In re Lemon* 15 C.A. (2) 82; 59 P. (2) 213. See also *U. S. v. Price* 163 Fed. 904; *Post v. U. S.* 161 U. S. 583; *U. S. v. Kimball* 117 Fed. 156.

proper application and cause shown may authorize the service of a subpoena at any other place. (Emphasis ours).

(2) A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as provided in Title 28, U. S. C. § 1783. As amended Dec. 29, 1948, eff. Oct. 20, 1949."

The subpoena in question was issued by the clerk of the court, and no statute of the United States authorizes any district court to issue the subpoena or gives the district courts of one district to subpoena a witness 2600 miles away. The trial court's demands exceeded lawful limits. Mr. Taylor was under no duty to travel 2600 miles in answer to a civil subpoena to appear as a witness. That appearance, we respectfully submit, is governed by Rule 45(e), of the Rules of Civil Procedure for the District Courts of the United States, and since it was served more than 100 miles away, we submit that the District Court of the Eastern District was without jurisdiction in the matter and the subpoena was a nullity and the judgment of contempt was void.[2] *West Publishing Co. v. Edward Thompson Co.,* 151 F. 138; *The Patapsco Ins. Co. v. South Gate,* 5 Pet. (30 U. S.) 604; 8 L. Ed. 243; *U. S. v. Stern,* 177 Fed. 479. The convenience of witnesses

[2]Our famous forefathers, in getting up the Declaration of Independence complained of the King of England that "he has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws; and they further complained of him . . . for transposing us beyond seas to be tried for pretended offenses." Our Tax Court judges travel to the locale of their hearings as do Commissioners of the Court of Claims.

as a matter of solicitude. *Tomlinson v. Moon,* 189 Fed. 845.

The right to subpoena witnesses is purely statutory. Prior to the revised present Title 28, Section 655, Title 28 (R. S. 877); Mar. 3, 1911, C. 231, Sec. 291, 36 Stat. 1167, provided:

> "Witnesses who are required to attend any term of a district court on the part of the United States, shall be subpoenaed to attend to testify generally on their behalf, and not to depart the court without leave thereof, or of the district attorney; and under such process they shall appear before the grand or petit jury, or both, as they may be required by the court or district attorney,"

The revised Title 28 omitted any provisions or statutory directions regarding grand juries.

The mode of summoning witnesses in the federal courts is regulated by statute.

Texas P. & R. Co. v. Nelson, 50 Fed. 814.

Many departments have their own statutory provisions for subpoenaes—The Securities and Exchange Commission (Sec. 19b of the Securities Act) (May 27, 1933) 48 Stat. 74; 15 U. S. C. A. 775(a) The Fair Labor Standards Act (June 25, 1938) 52 Stat. 1060 C. 676, 29 U. S. C. A., Sec. 211, in corporating Sec. 9 of the Federal Trade Commission Act, 38 Stat. 717 C. 811. See also Section 10 of that Act imposing criminal penalties for refusal to testify or to produce documents, etc. The Internal Revenue Code, Sec. 7402(b),

the Postoffice Department and many other statutes affecting investigative agencies have specific statutory authority and provide punishments for disobedience or may even contain immunity provisions for compliance. See Compulsory Testimony Act of Feb. 11, 1893, 49 U. S. C. A. 46; also 202(g) of the Emergency Price Control Act of 1942; 50 U. S. C. A. Appendix, Sec. 922(g).

This point we urge most strongly upon this court in addition to the point that the subpoena was not "served" in a true sense when no tender of travel expense was made simultaneously with the subpoena.

We think that this issue is of sufficient importance in the administration of justice to require a full and fair hearing on the merits, in addition to other points raised on our Petition for Certiorari originally, which we re-urge here with the same force and effect as if set out in this Petition for Rehearing.

WHEREFORE, petitioner respectfully prays that this Honorable Court grant a Rehearing and reverse the judgment and order before for want of jurisdiction of the Eastern District of Michigan.

Respectfully submitted,

MORRIS LAVINE
Attorney for Defendant-Appellant.

CERTIFICATE OF COUNSEL

I, Morris Lavine, attorney for the petitioner, do hereby certify that the foregoing petition is filed in good faith and not for the purposes of delay, and that it raises new matters of importance not heretofore urged upon the court in the original petition, and which should be considered in connection with the case before it is finally concluded. The grounds here urged are substantial and were not previously presented, and this petition is restricted to the grounds specified.

MORRIS LAVINE